IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.415 OF 1997

The State of Maharashtra).. Appellant
(Orig.Complt.)

Vs.

1. Pradip Ratnakar Thakur)
age about 23 years,)

2. Manoj Vinayak Thakur)
age about 24 years,)

3. Ganpat Laxman Marale,)
age about 40 years,)

4. Kisan Laxman Marale)
age about 45 years,)

5. Bhaskar Hendar Thakur)
age about 34 years,)

6. Vasant Ganpat Marale,)
age about 19 years.).. Respondents.
(Orig.Accd.No.1 to 6)

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Ms. P.H. Kantharia, APP for the State.

Mr. A.P. Mundurgi, Advocate for the respondents.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATE : 27TH JUNE, 2005.

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This appeal by State takes exception to Respondent No.1 to 6's acquittal for offences punishable under section 147, 148, 302, 307 read with section 34 or section 149 of the Penal Code and Section 354 read with section 34 of the Penal Code recorded by the learned Additional Sessions Judge Thane in Sessions Case No.255/95 before him.

2. Facts which led to the prosecution of respondents could be briefly stated as under: -

3. On 17th May 1994 at about 7.30 p.m. when victim Suresh was at his house , accused Nos. 1 - Pradeep and 2- Manoj called him out. Accordingly, the victim went out of his house. His daughter Vaishali followed her father. Vaishali's cries that her father

was being beaten led her mother complainant - Narmada outside the house. She saw accused No.3 - Ganpat armed with axe accused No.4 - Kisan armed with stick, accused Nos. 1, 2 and 6 - Pradeep, Manoj and Vasant armed with sickles, and accused No.5 - Bhaskar armed with bar assaulting Suresh mercilessly. Narmada went to her husband's rescue but was hit on head by accused No. 3 - Ganpat. When she ran towards her house accused No.3 Ganpat and accused No.5 - Bhaskar chased her. Accused No.5 - Bhaskar tore her blouse. Narmada fell down and the accused persons went away. Victim's daughter Vaishali informed neighbour Vimal. Vimal and her husband Jagannath rushed to the spot and took the victim and his wife to Kapurbawdi Police Station.

On a report given by Narmada an offence was registered and investigation commenced. In course of investigation the police performed inquest on the dead body of Suresh and caused it to be sent for post-mortem examination. Statements of witnesses were recorded. Accused persons were arrested. Blood stained clothes were seized. Recovery of weapons at the instance of the accused was made Property seized was sent to Forensic Science Laboratory. Upon receipt of reports from the Laboratory chargesheet was sent to the learned J.M.F.C., Thane, who committed the case to

Court of Session on finding that the accused had committed an offence triable exclusively by Court of Session.

4. The learned Additional Sessions Judge, Thane, to whom case was assigned framed charge of offences punishable under section 147, 148, 302, 307 read with section 34 or section 149 I.P.C. and Section 354 read with Section 34 I.P.C. All the accused pleaded not guilty to the said charges and consequently were put on a trial. In course of trial the prosecution examined as many as 14 witnesses. The defence of the accused as disclosed from cross-examination and statements under section 313 Cr.P.C. is that they were falsely involved due to past quarrels. Upon consideration of evidence tendered in light of arguments advanced the learned Additional Sessions Judge acquitted all the accused of the charges levelled holding that the evidence tendered was not satisfactory. Aggrieved thereby the State has appealed.

5. We have heard both the learned Additional Public Prosecutor for the State and learned Counsel for respondents. The learned Additional Public Prosecutor urged that there was no reason for the

learned Additional Sessions Judge to disbelieve eye witness account of complainant Narmada. She submitted that her evidence was enough to establish the complicity of accused in the murderous attack launched on victim Suresh and also assault on complainant Narmada. In order to examine this contention we have gone through the evidence on record with the help of both the learned Counsel.

6. Notes of post mortem examination of Suresh at Exhibit 17 were duly proved by P.W. 8 - Dr. Khadtare. These notes show that the victim had as many as 22 surface injuries. The long list of injuries would make one believe that there was a very severe murderous attack on the victim. However, the evidence of Dr. Khadtare shows that none of the injuries had resulted in any damage to any vital organ. Dr. Khadtare certified that death was due to shock due to haemorrhage, due to multiple incised wounds. In course of his cross-examination he stated that the injuries indicated that the object of assault was to handicap the person, ruling out that the attack was homicidal in nature. He stated that there was no corresponding internal injury, and all the wounds were surface wounds. In face of this medical evidence it has to be held that death of Suresh did not occur on

account of any homicidal assault. True, Suresh did meet with his death on account of injuries but nature and gravity of wounds would rule out any intention or knowledge to cause death of Suresh attributable to any of the assailants. The eye-witness account would have to be now scanned bearing this medical evidence in mind.

7. Two eye witnesses, to the incident P.W. 1 - Dharma Narayan Shelar and P.W. 2 - Raghunath Dharma Shelar have turned hostile. P.W.2 - Raghunath went on to the extent of explaining injury on the person of Narmada by saying that she was injured while banging her head against stone. Thus, the evidence of these two witnesses is totally useless to connect the accused to the crime. The evidence of P.W. 5 - Kalavati is likewise of absolutely no value as it throws no light on the incident in question. P.W. 4 - Vimal learnt of the assault from Narmada and though she was the first to reach the spot, she did not state that the victim named any of the respondents to be the assailants.

8. P.W. 6 - Police Constable - Mahindra states that on 17/5/1994 at 8.00 p.m. when he was on duty at the police station Kapurbawdi he learnt of an affray

and therefore accompanied A.S.I. - Suryavanshi. They saw Suresh and Narmada in an injured state and took both of them to the hospital. He is categorical that Narmada did not name the assailants of Suresh on the way to hospital. P.W. - 7 - Dilip and P.W. 13 - Sanjay are other two witnesses who accompanied A.S.I. - Suryavanshi to the hospital with victims but do not state anything about involvement of the accused.

9. P.W. 11 - Chandrakant Tukaram Patil was supposed to have witnessed of seizure of clothes of accused Pradeep and Manoj vide Panchnama Exhibit 36. He turned hostile and refused to support the prosecution. He was also supposed to have witnessed discovery of weapons at the instance of accused Ganpat Laxman Marale. P.W. 12 - Kishor Bhoir, another Panch at seizure of clothes of accused Ganpat and Kisan likewise turned hostile. This leaves P.W. 9- Narmada, P.W. 10 - Vaishali as the only witnesses to bear the burden of proving entire prosecution case about assault by the six respondents. P.W. 9- Narmada states that first quarrel between members of her family and that of accused Ganpat Marale had taken place a few days prior to the incident. She stated that sister of Ganpat Marale used to tease her daughter by calling her lame. She stated that on

17/5/1994 at about 4.30 p.m. she returned to her home since she was not feeling well. She and her husband had proceeded to dispensary and returned as the dispensary was closed. They were sitting in their house when, at about 7.30 p.m., accused Pradeep and Manoj standing outside their house called out her husband. Her husband Suresh stepped outside her house and daughter Vaishali followed. Hearing Vaishali's cries, she stepped out and found that Ganpat was hitting Suresh with axe, Kisan and Vasant were hitting him with sticks, Bhaskar was hitting with iron bar and Manoj and Pradeep were hitting him with sickles.

10. Narmada states that she intervened but Ganpat Marale pulled her back and gave a blow with an axe resulting in bleeding injury. She stated that Bhaskar pulled her saree and Ganpat tore her blouse. She fell on ground. Suspecting her to be dead all the accused persons left. Vaishali went to inform her paternal aunt about the incident on seeing both the parents injured. Vimal and Jagannath came to the spot. Two policemen also came and the injured persons were moved to the Hospital where Suresh succumbed to injuries at 10.10 p.m. Narmada stated that one Deepak had reported the matter to police. This Deepak has not been examined by the prosecution. Narmada proved her

report to police at Exhibit - 30. FIR normally is useful in providing corroboration to testimony of complainant. It lends an assurance of truth of complainant's evidence as it is the first official record of complainant's version of the incident - unspoilt by any concoctions. But this report is of no use in providing any corroborative support to Narmada's evidence because the evidence of P.W. 6 - Police Constable Mahindra shows that police had already received first information about the incident and he had infact accompanied A.S.I. - Suryavanshi to the spot at 8.00 p.m. itself. Report of Narmada is recorded at 11.10 p.m.

11. While Narmada identifies article No.24 as the axe which was in the hands of accused Ganpat and by which she claims to have been hit, Dr. Khadtare has ruled out that Narmada could have sustained injuries by an axe. P.W. 8 - Dr. Khadtare had also examined Narmada. He found that there were number of injuries on the person of Narmada mentioned by him in his certificate at Exhibit 49, but stated that the injuries were not possible by an axe but were possible by sickle. This has to be read in the context of Narmada's own statement that when she sought to rescue Suresh accused Ganpat hit her with an axe on the back

side of her head. Thus, Narmada's account of the manner in which she sustained injury is contradicted by medical evidence of Dr. Khadtare.

12. It seems that Narmada is not sure as to what happened to her own clothes. She stated that accused Ganpat tore her blouse but added that it was not totally removed from her person though it was badly torn. She admittedly having stated in her supplementary statement to police that the blouse in a torn condition was on her person, but deposed that she had thrown it since it was badly torn and did not know whether she had thrown it.

13. Cross-examination of Narmada would show that she regards one Gulabbai as a respectable lady of the locality and that she used to go to Gulabbai whenever there was a quarrel. She stated that Deepak, who had informed the police of incident, was sent by Gulabbai to the spot. She admitted the fact that her statement that accused Nos.1 and 2 - Manoj and Pradeep were outside her house at 7.30 a.m. does not find place in her F.I.R. She stated that pieces of her blouse as well as her saree was lying on the spot. Panchanama spot at Exh. 23 shows that a mangalsutra, pieces of green bangles, a blood stained saree and a lungi were

found at the spot alongwith other items. Curiously, she stated that accused Ganpat had held her from behind and only when accused held her from behind she realised that the person holding her was Ganpat.

14. P.W. 10 Vaishali is a child witness she was seven (7) years old when she was examined in the Court. In course of cross-examination, the witness stated that her mother was inside the house when her father was being assaulted. She also stated that when her father was assaulted, she was taken **by her mother** to the house of Vimal contradicting Narmada's version. She admitted that since her mother had pointed to accused Pradeep she could identify him and name him correctly. Thus, the evidence of Vaishali is of no help in providing any corroboration to the evidence of Narmada.

15. Reports from Forensic Science Laboratory at Exhibit - 56 show that blood group of Narmada was "B". Report Exhibit - 57 would show lungi, piece of saree, and two sarees had stains of blood and some other articles seized bore stains of blood group "B", while in respect of some other articles the test was inconclusive. In the absence of evidence to show that any clothing of the accused or article delivered by

the accused had stains of blood group different from that of accused themselves, it would be difficult to put this evidence from the Forensic Science Laboratory to any use.

16. P.W. 9 - Narmada had stated that in respect of incident of teasing her daughter, Indubai - sister of accused Ganpat had lodged a complaint against her. This is significant since it would show that Narmada may have an axe to grind against the family of Ganpat. She stated in her cross-examination that all the accused persons belong to different communities, they are in different businesses, reside in different localities in different areas. In these circumstances it is difficult to conclude as to why all of them should have come together to launch an attack on Suresh.

17. To sum up, though the prosecution examined as many as 14 witnesses, except for P.W. 9 - complainant Narmada, none of the prosecution witnesses has tendered any positive evidence about complicity of the accused in the assault. Story of Narmada doesn't receive support from evidence of P.W. 8 - Dr. Khadtare. The story is also incredible because there is no explanation as to why six persons from diverse

communities, professions and localities would come together to launch such an attack. In view of this, it cannot be said that findings recorded by the learned Additional Sessions Judge, Thane, are in any way improbable or perverse. It seems to us that in the state of evidence which was presented to him he would have no alternative but to record that the prosecution failed to prove involvement of any of the accused persons in the assault.

18. Consequently, we hold that the appeal is devoid of merit and dismiss it. Bail bonds, if any, furnished by the respondents shall stand cancelled.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)